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Author(s): Victoria Kahn

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VICTORIA KAHN

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## Political Theology and Fiction in *The King's Two Bodies*

FROM CLAUDE LEFORT TO GIORGIO Agamben, modern political philosophers and cultural critics alike have found it necessary to grapple with the problem of political theology. Defined in general terms as the political use of religion, political theology also conjures up the notion that politics is grounded on religious claims, above all the claim of revelation. In this sense, political theology is the problem that early modern constitutionalist theories of the state were originally designed to address and that modern liberal societies continue to confront today. This essay explores the contribution of one of the twentieth century's most important intellectual historians—Ernst Kantorowicz—to the modern quarrel between political theology and liberal constitutionalism. I'm thinking of course of Kantorowicz's most famous work, *The King's Two Bodies*.<sup>1</sup> A founding text for New Historicism because of its emphasis on the symbolic or theatrical dimension of political power, *The King's Two Bodies* can now be read in light of its timely subtitle, *A Study in Mediaeval Political Theology*, which promises a historical perspective on modern ideas of political theology. In particular, I want to suggest that Kantorowicz provides an account different from those of scholars such as Heinrich Meier or Steven Smith, who argue that political theology conjures up the view that a genuine notion of politics must be based on revelation.<sup>2</sup> Instead, for Kantorowicz, political theology is inseparable from the work of legal and literary fiction.

Here I develop this claim by resituating *The King's Two Bodies* in its original historical context. As Kantorowicz was fully aware, while the phenomenon of political theology has ancient roots, the phrase was used in the 1930s in discussions of the crisis of Weimar Germany and the rise of the Nazi state.<sup>3</sup> *The King's Two Bodies* is Kantorowicz's effort to come to terms with this recent history of political theology. Specifically, Kantorowicz's argument should be seen as a response to the work of Carl Schmitt on the one hand and Ernst Cassirer

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ABSTRACT This essay argues that Ernst Kantorowicz's *The King's Two Bodies* is intended as a contribution to twentieth-century debates about political theology and that modern students of political theology can learn from Kantorowicz's association of political theology with legal fiction. / REPRESENTATIONS 106, Spring 2009 © The Regents of the University of California. ISSN 0734-6018, electronic ISSN 1533-855X, pages 77-101. All rights reserved. Direct requests for permission to photocopy or reproduce article content to the University of California Press at <http://www.ucpressjournals.com/reprintinfo.asp>. DOI:10.1525/rep.2009.106.1.77.

on the other. *The King's Two Bodies* does not simply anticipate New Historicism; it also intervenes in early twentieth-century debates about what we might call old historicism.<sup>4</sup> Positioning Kantorowicz between Schmitt and Cassirer will in turn help us understand the importance of fiction—both legal and literary—to the model of political theology advanced by *The King's Two Bodies*. This essay, then, is essentially a contribution to intellectual history, both European intellectual history of the early twentieth century and the history of the idea of political theology. But it is also a meditation on the role of literature and fiction more generally in fostering a critical perspective on our current political theologies and political myths.

Before turning to Kantorowicz's relation to Schmitt and Cassirer, it's important to recall a few historical and bibliographic details. *The King's Two Bodies*, published in 1957 after Kantorowicz had emigrated to the United States, is a hard—perhaps deliberately hard—book to read. Kantorowicz himself fostered the notion that the book had no argument, writing in his preface something no assistant professor could get away with today: “Only hesitatingly and rarely did the author find it necessary to draw conclusions or indicate how the various topics discussed in these pages should be . . . [integrated] with each other” (xi). Kantorowicz's reluctance to state his argument might have had something to do with the vexed reception of his first book, a biography of the medieval Hohenstaufen Emperor Frederick II. It is hard to know whether contemporary readers of this biography were more shocked by the absence of footnotes or by the prophetic tone, including the comparison of Frederick to both the Messiah and the Antichrist. But perhaps it isn't necessary to choose, since the absence of scholarly apparatus was a symptom of the larger goals of the work to provide “Secret Germany”—the circle around the German poet Stefan George—with a model for a more integrated and spiritual form of life. Frederick's *renovatio* of the Roman Empire, it was implied, foreshadowed George's vision of the new Reich. Whatever George may have intended by “Secret Germany,” it's easy to see how the Frederick biography could have been enthusiastically received by Hitler and Goebbels, who read it as a celebration of German nationalism and of a specifically Germanic heroism.

The reception of Kantorowicz's first book appears to have left its mark on *The King's Two Bodies* in more than one way. Whereas the first edition of the Frederick biography flaunted scholarly protocol by ostentatiously omitting all footnotes, *The King's Two Bodies* practically drowns in them. In fact, the book is all about its sources: beginning in the twelfth century and moving forward to the English civil war, Kantorowicz tracks the appropriation of theological metaphors, above all the ecclesiastical body of the Church and the incarnated body of Christ, for secular political purposes, showing their distinctive use by English common lawyers for the crown. But the argument

and central exhibits of *The King's Two Bodies* also seem intended to provide an antidote to the misuse of Kantorowicz's *Frederick II*. First, *The King's Two Bodies* shows how the idea of the two bodies could morph into the distinction between person and office, which in turn played a crucial role in the dethroning of Charles I in 1649. If charisma is one effect of the king's two bodies, the other is—at least in the long run—constitutionalism. Second, myth conspicuously gives way to fiction. By fiction I mean first of all the notion of a legal fiction, which is central to Kantorowicz's analysis of the notion of the king's two bodies. But by fiction I also mean literature, though the term is somewhat anachronistic when applied to medieval and Renaissance texts. As we will see, however, Kantorowicz himself links the idea of a legal fiction to literary fiction, when he frames the argument of *The King's Two Bodies* with an analysis of Shakespeare's *Richard II* on one hand and Dante's *Divine Comedy* on the other. Whereas Shakespeare depicts the fatal separation of the king's two bodies and thus anticipates the regicide of Charles I and the English republic, the *Divine Comedy* articulates what the George circle saw as Dante's secular religion of humanity and his vision of a world community. We could then provisionally say that *The King's Two Bodies* presents two arguments or narratives: the first concerns the Christological origin of secular constitutionalism in Shakespeare's England; the second concerns the secular religion of humanity best articulated by Dante.<sup>5</sup> In the following pages, I argue that the analysis of legal and literary fictions in these two "literary" chapters in particular responds to the work of Schmitt on the one hand and Cassirer on the other.

Let me begin with Schmitt. The term "political theology" in the subtitle of *The King's Two Bodies* almost certainly refers to Carl Schmitt's 1922 book of that title, in which Schmitt famously stated that "all significant concepts of the modern theory of the state are secularized theological concepts."<sup>6</sup> Kantorowicz borrows both the term "political theology" and Schmitt's general argument when he claims that English and continental lawyers used theological concepts to shore up the secular power of the medieval and early modern state. Yet by 1957, when *The King's Two Bodies* was published, Kantorowicz would also have known that Schmitt's political theology had been tarnished by Schmitt's dealings with the Nazi regime in the 1930s. That Kantorowicz was aware of the Nazi connotations of political theology is signaled by the coy denial that appears in the preface to *The King's Two Bodies*:

It would go much too far . . . to assume that the author felt tempted to investigate the emergence of some of the idols of modern political religions merely on account of the horrifying experience of our own time in which whole nations, the largest and the smallest, fell prey to the weirdest dogmas and in which political theologisms became genuine obsessions defying in many cases the rudiments of human and political reason. (viii)

At the same time, Kantorowicz admits in the very next sentence that he “was not unaware of the later aberrations,” which I take it refers to the Nazi death camps (viii). Moreover, Kantorowicz goes on to announce that he thinks of *The King’s Two Bodies* as a contribution to what Ernst Cassirer called “the myth of the state,” in a 1946 book by that title published in response to his experience of Nazi Germany.

At first glance, this lineage seems improbable. Cassirer was a neo-Kantian philosopher who had elaborated a philosophy of symbolic forms, in which myth appeared as an early, primitive stage of symbolic thought. But the political events of World War II, in particular the Nazi regime, changed Cassirer’s thinking on these matters. It was Nazi propaganda that forced Cassirer to recognize that myth had not been historically superseded by rationalism; to the contrary, myth could “be manufactured in the same sense and according to the same methods as any other modern weapon—[such] as machine guns or airplanes.”<sup>7</sup> Germany’s rearmament, according to Cassirer, had begun not in 1933 but even earlier, with the manufacture of new political myths. Cassirer thought of *The Myth of the State* as a critical analysis of such artificial myth-making. “It is beyond the power of philosophy to destroy the political myths. A myth is in a sense invulnerable. It is impervious to rational arguments; it cannot be refuted by syllogisms. But philosophy can do us another important service. It can make us understand the adversary” (296).

In the conclusion to *The Myth of the State*, Cassirer tells us that the specific adversary he had in mind was Martin Heidegger. According to Cassirer, Heidegger’s notion of *Geworfenheit*, or existential thrownness into the world, gives up “all hopes of an active share in the construction and reconstruction of man’s cultural life” (292). Here it’s helpful to remember that Heidegger had engaged Cassirer in a famous philosophical debate in Davos, Switzerland, in 1929—a debate the younger Heidegger was perceived to have won. This means Heidegger was perceived to have vindicated a historicist philosophy against Cassirer’s neo-Kantianism. In the gloss of Peter Eli Gordon, “Heidegger’s philosophical ‘victory’ over Cassirer’s transcendentalism stands at the origins of the twentieth century’s turn towards historicism, and thus serves as one of the indispensable foundations for intellectual-historical method today”; “the dispute between Heidegger and Cassirer represents the ongoing challenge of reconciling hermeneutic-historicist modes of situated understanding with the transcendentalist, non-historicist premises of philosophic rationality.”<sup>8</sup> From this vantage point, we can see *The Myth of the State* as challenging Heidegger’s historicism with a rational analysis of historical events that does not succumb to existential relativism. So when Kantorowicz writes that *The King’s Two Bodies* is a contribution to the project outlined by Cassirer, he signals his own desire not simply to reproduce or advocate political myths (as he did in his *Frederick II*), but to analyze how they worked.

Unlike Cassirer, however, Kantorowicz was also interested in redeeming myth—including artificial or manufactured myth—for modernity.

I'd like to suggest that we can recover some of the original impulse and continuing interest of *The King's Two Bodies* if we see Kantorowicz positioning himself between Schmitt's political theology and Cassirer's critique of existential historicism. From Schmitt he takes the idea of the secular appropriation of theological concepts, as well as the idea of the congruence of theological or metaphysical ideas and political forms within a given historical moment. From Cassirer, he adopts the persona of the rational, secular demystifier of historical and contemporary myth. But unlike either Schmitt (who was hostile to the merely aesthetic) or Cassirer (who was critical of the modern political use of myth), Kantorowicz also defends the positive role of what all three recognized as the manufactured or invented myth in the twentieth century. For Kantorowicz, this kind of myth can be found, above all (though not exclusively), in literature. In prefacing his historical analysis of the king's two bodies with Shakespeare, Kantorowicz challenges—through literature—Schmitt's critique of liberal ideas of representation. In concluding with Dante, who represents a secular religion of humanity and world community, Kantorowicz attempts to answer Cassirer's fears about the irrational role of myth in the twentieth century. In neither case does literature simply function as yet another source of historical evidence. Instead, as I hope to show, Kantorowicz finds in literature an exemplary self-consciousness about the symbolic dimension of human experience, about the human capacity to make and unmake symbolic forms. In modern terms, we might say that, in Kantorowicz's reading of Shakespeare and Dante, literature reveals both its capacity for ideological critique and for enabling fictions of human community. It can serve as an antidote to political theology of the Schmittian sort, even as it authorizes a new vision—a new “secular ‘political theology,’” to borrow Kantorowicz's phrase (87)—of the human community.

### Schmitt

As I noted earlier, in *Political Theology* Schmitt claims that all significant concepts of the modern state are secularized versions of theological concepts. He also defines the sovereign as “he who decides the exception.” Schmitt then goes on to claim that “the exception in jurisprudence is analogous to the miracle in theology,” thereby illustrating his belief that there is a structural analogy between the theology or metaphysics of a given historical period and its dominant political forms (36).

The first thing to note about *Political Theology* is that it is not just—not even primarily—a scholarly analysis of the emergence of the modern nation-state and the process of secularization. In charting the historical analogies

between theology, metaphysics, and politics, Schmitt wanted ultimately to provide a diagnosis of his own political moment, in which the putatively sovereign German state was plagued by exceptions and incapable of making a decision. Schmitt's analysis of twentieth-century politics runs as follows: liberal, economic thinking has taken over modern life and crowded out a genuine notion of politics. This declension began in the seventeenth century. Although Hobbes correctly understood that political authority was personal authority, and borrowed theological ideas to describe his idea of the sovereign as a mortal god, later thinkers instituted a liberal idea of representation, which divorced formal political authority from the idea of personality and equated representation with delegation or standing for a numerical aggregate (28).<sup>9</sup> In *Political Theology* and *Roman Catholicism and Political Form*, Schmitt tries to provide a countermodel to this liberal, economic mode of thinking, one in which a Catholic "concrete" idea of form substitutes for neo-Kantian formalism on the one hand and aesthetic form on the other.

In his helpful gloss on Schmitt, Samuel Weber writes, "The 'decision' that for Schmitt constitutes both the legal order and its political condition, namely sovereignty, is thus by its nature a singular act, not derivable from any generality: it is therefore never a *norm* but only a *form*." This formalism differs from that of legal positivism or the kind of procedural formalism we associate with some accounts of liberalism. It also differs from an aesthetic conception of form which, as Schmitt tells us, does not involve a decision.<sup>10</sup> Instead, what Schmitt has in mind is a specifically Catholic notion of form, according to which the sovereign is, ideally, like the pope. As Schmitt explained in *Roman Catholicism and Political Form* (1923),

The pope is not the Prophet but the Vicar of Christ. . . . The fact that the office is made independent of charisma signifies that the priest upholds a position that appears to be completely apart from his concrete personality. Nevertheless, he is not the functionary and commissar of republican thinking. In contradistinction to the modern official, his position is not impersonal, because his office is part of an unbroken chain linked with the personal mandate and concrete person of Christ.<sup>11</sup>

The Catholic notion of form is superior to an abstract (republican) idea of representation as delegation because Catholic political form involves a concrete power to represent the human community. Or as Schmitt writes elsewhere:

The Church also is a "juridical person," though not in the same sense as a joint-stock company . . . . The typical product of the age of production is a method of accounting, whereas the Church is a concrete personal representation of a concrete personality. All knowledgeable witnesses have conceded that the Church is the consummate agency of the juridical spirit and the true heir of Roman jurisprudence. Therein—in its capacity to assume juridical form—lies one of its sociological secrets. But it has the power to assume this or any other form only because it has the power of representation. [The Church] represents the *civitas humana*, it presents at every instant

the historical connection with Christ's becoming-human and sacrific[ing himself] on the cross; it represents Christ himself, in person, God become Man in historical reality. In this representative dimension resides its superiority over an age of economic thinking.<sup>12</sup>

In this passage Schmitt appears to accept the scholarly consensus that Roman law is the model for canon law notions of the Church as a juridical person. But he also goes out of his way to distinguish between the Roman idea of a corporation and the Church as the corporate body of the faithful.<sup>13</sup> Here we see that political theology doesn't simply name the process of secularization for Schmitt; it also refers to a specifically Catholic paradigm, which Schmitt proposes as the solution to the modern political crisis of liberal states. It seems likely that it was precisely this at once "personalist" and "institutionalist" notion of sovereignty that inclined Schmitt to support Hitler and the Nazi party in the 1930s, after the failure of the Weimar state.<sup>14</sup>

Before returning to Kantorowicz, it's important to emphasize the contrast between Schmitt's idea of Roman Catholic form and aesthetic form. On the one hand, Schmitt was critical of what he thought of as an aesthetic notion of art, according to which the experience of the autonomous work of art gives rise to the free play of our faculties, to a purposeful purposelessness—to paraphrase Kant—that serves to mediate between the physical realm of nature and the moral realm of freedom. For Schmitt, this idea of the aesthetic was part of a liberal notion of culture, according to which individuals form themselves just as they artificially create the state in liberal political theory. Schmitt saw this notion of culture as the byproduct of the increasing rationalization of politics and the increasing domination of technology in all spheres of life in the nineteenth century.

On the other hand, literature did have a role to play in Schmitt's political theology. In particular, Schmitt aligned his vision of politics with the genre of tragedy, singling out Shakespeare's *Hamlet*, which Schmitt read as allegorizing the Tudor succession crisis and the world-historical decision between Protestantism and Catholicism.<sup>15</sup> Whereas the bourgeois liberal is "concerned only with security," the truly moral man is preoccupied with revelation. This means that, as Heinrich Meier has argued, "moral man longs for tragedy, and he conceives of the world in its image as fate and dispensation."<sup>16</sup> By virtue of its existential seriousness, tragedy is raised above the liberal sphere of culture; no longer an instance of fiction, tragedy instead returns us to a moment before aesthetics, when theology, not art, was the dominant mode of conceiving one's relation to the world.

The similarities and differences between Schmitt and Kantorowicz are striking. Kantorowicz also tells the story of the appropriation of theological concepts for political purposes. Like *Political Theology* and *Roman Catholicism and Political Form*, *The King's Two Bodies* sketches a history of representation

in the political sphere, in which the relationship of person and office has a crucial role to play. Just as Schmitt would later align his political vision with Shakespearean tragedy, so Shakespearean tragedy—specifically *Richard II*—plays an important role in *The King's Two Bodies*. Finally, like Schmitt, Kantorowicz is deeply concerned with what the Church called the “*civitas humana*.” But the differences between Schmitt and Kantorowicz are even more striking. In particular, Schmitt and Kantorowicz differ on their interpretations of juridical personhood and of the earthly city and its political embodiment in the state—interpretations that depended on the (for Kantorowicz) related notions of legal fiction and literary form.

Let me first turn to the idea of a fictive legal person. Although Schmitt used the Roman legal language of juristic person to describe the pope, he also wanted to clearly distinguish between the juristic person and the fiction of a corporation.<sup>17</sup> According to Schmitt, the juristic person needed to be embodied in a real person, whereas the idea of the corporation involved merely an abstract legal fiction. This distinction was crucial to Schmitt's political thinking. Thus he insisted on the “personalistic” dimension of sovereignty—its embodiment in a single person. The sovereign had to be a real person, and not only a juristic person, because only real persons can make decisions (*RC*, 21). According to Schmitt, “the seventeenth and eighteenth centuries were dominated by this idea of the sole sovereign, which is one of the reasons why, in addition to the decisionist cast of his thinking, Hobbes remained personalistic and postulated an ultimate concrete deciding instance, and why he also heightened his state, the Leviathan, into an immense person and thus point-blank into mythology” (*PT*, 47). Hobbes's personalism was “a methodical and systematic postulate of his juristic thinking” (47), and needed to be sharply distinguished from both the organic idea of the state and the corporate notion of the people as a “juristic person” (*PT*, 39–40). As Schmitt declared in *Political Theology*, “The unity that a people represents does not possess this decisionist character.” This means that the people cannot be equated with the person of the sovereign as Schmitt and Hobbes imagine it (49).<sup>18</sup>

Roman law has an entirely different valence in Kantorowicz's analysis. Rather than adopting Schmitt's interpretation of the juristic person as excluding the notion of the corporation, Kantorowicz deliberately equates them. That is, where Schmitt insists on a Catholic, personalist notion of representation, which he clearly distinguishes from a joint stock company, Kantorowicz argues that the Roman-canon juristic person is compatible with the legal notion of a corporation. Perhaps even more to the point, for Kantorowicz the juristic person is a fictive person (209). This in turn leads Kantorowicz to suggest that juristic fictions may have some relation to nominalist intellectual fictions (302 ff.). This is because Kantorowicz subscribes to the

idea of the juridical person or corporation as an enabling fiction rather than a “real being.”<sup>19</sup> As he goes on to argue, the fact “that this corporate person was a fictitious person detracted nothing from its value, especially its heuristic value. . . . Aquinas, actually following Augustine, could define ‘fiction’ in a signally positive sense as *figura veritatis* [figure of truth]. And Baldus, elaborating glosses of Accursius and Bartolus, finally declared, with a slight twist of an Aristotelian tenet: ‘*Fiction imitates nature*. Therefore, fiction has a place only where truth can have a place” (306). And, in a fascinating footnote (n. 81), Kantorowicz anticipates later legal work on legal and poetic fiction by noting the overlap between these two concepts in the Aristotelian tradition.<sup>20</sup>

The thrust of this analysis is to account for what we might call the fiction-alizing of the crown, which in turn eventually helped to undermine the crown’s claims to divinity. Thus, in a section of *The King’s Two Bodies* entitled “The Crown as Fiction,” Kantorowicz shows how medieval glossators used the Roman law of inheritance—specifically the “fiction of Law” that guaranteed the continuity of predecessor and successor—to explain the continuity of temporal authority (338). In the same period, Pope Innocent III tried to strengthen the power of the papacy in relation to the empire by sharply rejecting the idea of a “Christ-like or Christ-centered kingship” (319). In particular, Innocent elaborated a distinction between person and crown that influenced later English political thought by implying that the crown could not simply be identified with the king but stood instead for something more like “the body politic”: “Briefly, as opposed to the pure *physis* of the king and to the pure *physis* of the territory, the word ‘Crown,’ when added, indicated the political *metaphysis* in which both *rex* and *regnum* shared” (341). Gradually, “the notion of the Crown, introduced in England during the twelfth century mainly in fiscal and legal matters, began to gain new momentum under the impact of Canon Law concepts and to assume constitutional connotations which it did not have before” (359).<sup>21</sup> In time, the separation between person and crown made it possible to imagine the demise of monarchy.<sup>22</sup>

This connection between nominalism and the crown as fiction is precisely the insight that Kantorowicz attributes to Shakespeare’s *Richard II*. Commenting on Richard’s speech in the opening of act 2, scene 3, Kantorowicz writes: “A curious change in Richard’s attitude—as it were, a metamorphosis from ‘Realism’ to ‘Nominalism’—now takes place. The Universal called ‘Kingship’ begins to disintegrate; its transcendental ‘Reality,’ its objective truth and god-like existence, so brilliant shortly before, pales into a nothing, a *nomen*” (29). And a little later he notes, “The fiction of the oneness of the double body breaks apart. Godhead and manhead of the King’s Two Bodies . . . stand in

contrast to each other” (31). The fictive Richard II, that is, comes to understand kingship itself as a fiction that can be dismantled:

Now mark me how I will undo myself:  
I give this heavy weight from off my head,  
And this unwieldy sceptre from my hand,  
The pride of kingly sway from out my heart;  
With mine own tears I wash away my balm,  
With mine own hands I give away my crown,  
With mine own tongue deny my sacred state,  
With mine own breath release all duteous oaths:  
All pomp and majesty do I forswear . . .<sup>23</sup>

When, at a later moment, Richard represents himself as a traitor to “the pompous body of a king,” Kantorowicz observes, “It is as though Richard’s self-indictment of treason anticipated the charge of 1649, the charge of high treason committed by the king against the King” (39). “The demise of Richard” is at the same time “the rise of a new body natural,” not only that of his successor, Henry IV, but the corporate body of the people themselves.

Kantorowicz could have found this insight in Edmund Plowden, the sixteenth-century common lawyer who is Kantorowicz’s main source for the language of the king’s two bodies. As Lorna Hutson has shown, Plowden cites legal discussions of the king’s two bodies only to show that they were for the most part rejected by the common lawyers.<sup>24</sup> But Kantorowicz appears more interested in the way Shakespeare imaginatively anticipated the unraveling of the fiction of the king’s two bodies than he is in reading Plowden closely. In fact, he seems to attribute to literature—or at least to Shakespeare—a unique ability to effect such unraveling, to reveal the “fiction” of the king’s two bodies as just that.<sup>25</sup> “It was . . . the live essence of [Shakespeare’s] art,” he writes, “to reveal the numerous planes active in any human being, to play them off against each other, to confuse them, or to preserve their equilibrium, depending all upon the pattern of life he bore in mind and wished to create anew” (25–26). A page later, Kantorowicz refers to the “‘duplications’ which Shakespeare . . . unfolded in the three bewildering central scenes of *Richard II*. The duplications [are] . . . all one, and all simultaneously active in Richard—‘Thus play I in one person, many people’ (5.5.31). . . . Moreover, in each one of those three scenes we encounter the same cascading: from divine kingship to kingship’s ‘Name,’ and from the name to the naked misery of man” (27). In short, “the fiction of the oneness of the [fictive] body breaks apart” (31). As Kantorowicz notes, Shakespeare’s contemporaries recognized the extraordinary power of this metafictional moment. In response to a performance of *Richard II* staged shortly before Essex’s rebellion, Queen Elizabeth famously remarked “I am Richard, know ye not that?” Some fifty years later, in a scene

Kantorowicz neglects, King Charles I imagined himself as Shakespeare's Richard during his trial for treason to the English people.<sup>26</sup>

With this exploration of literary fiction, we might seem to have wandered very far from the legal fiction of the king's two bodies. But for Kantorowicz a legal fiction is distinguished from a literary fiction only by its institutional home. Thus, in his later essay "The Sovereignty of the Artist," he writes:

"Art imitates Nature" was, of course, an Aristotelian maxim. It became generally known after the *Physics* had been translated, some time before 1200, and the likewise relevant *Poetics*, around 1250. There were, however, other literary channels accessible to the Middle Ages through which knowledge of these doctrines could have been transmitted in a more indirect fashion. One of these channels, which was quite independent of the normal literary currents, was Roman law. While harking back to early Roman jurists of the first and second centuries, Justinian's *Institutes* and *Digest* reproduced, and medieval jurists therefore began to interpret, the essence of the Aristotelian maxim. To be sure, in the legal jargon the famous principle did not refer to visual arts or artistic vocation at all, but referred to art only in a very special sense, far removed from painting or sculpture. It was quoted for a rather prosaic and sober purpose, that is, to clarify a central point of the law of adoption. "It is the opinion that a younger person cannot adopt an older one; for adoption imitates nature, and it would be monstrous if the son were older than the father." That is to say, Jurisprudence, commonly defined as an art (*ius est ars boni et aequi*), "imitated nature" just as every other art was supposed to do, and imitated it, in the case of adoption, by means of an artistic fiction.<sup>27</sup>

Kantorowicz goes on to show how, in time, the idea of the legislator shifted from the imitator of nature to the creator of new laws ex nihilo—like God and the sovereign. This notion of the sovereign's power of creation was in turn extended to the artist himself: the equating of "poet and emperor or king—that is, of the poet and the highest office representing sovereignty—began as early as Dante," who saw Apollo's laurel as the reward of "a Caesar or a poet" (362; *Paradiso* 1.29).<sup>28</sup> I will return to the importance of this line from Dante toward the end of this essay. For now it's clear that for Kantorowicz a legal fiction just is a particular kind of artistic fiction, which helps to explain why artistic fictions can shed so much light on the working of fiction in the law.

As Kantorowicz makes clear in the conclusion of his book, one goal of *The King's Two Bodies* was to show that English common law was not as isolated from continental legal thought as had sometimes been assumed (494–95). But I think the import of this claim has often been misunderstood. In his reading of the legal and literary fiction of *Richard II*, and of English legal thought more generally, Kantorowicz exposed what Alain Boureau has called the liberating function of Roman law, "its power to create fictions that allow man to escape from the direct influence of nature, force, and the group." And Kantorowicz did so in order to bring out the constitutionalist implications of royal charisma.<sup>29</sup> Thus, while the corporation

could take the form of the “corporation sole” of the king, in time it comes to be equated with the corporate body of the people. (Here we could say that Kantorowicz would have agreed with William Blackstone, who called corporations “little republics.”)<sup>30</sup> Kantorowicz’s reading of Shakespeare is in keeping with this line of argument. Where Schmitt conceived of Shakespearean tragedy as resisting both an aesthetic notion of art and a liberal conception of the state, Kantorowicz conspicuously allies Shakespearean tragedy with Anglo-American constitutionalism. At the same time, however, Kantorowicz does not simply abandon Schmitt’s notion of Catholic political theology and the *civitas humana*. Instead, he reconfigures them in a way that is diametrically opposed to Schmitt. Rather than seeing the state as constituted by the friend-enemy distinction, Kantorowicz imagines a cosmopolitan empire—what we might call a global order. In so doing, he submerges the genre and metaphysics of tragedy into a new divine comedy.

This is why, I think, *The King’s Two Bodies* concludes with a chapter on Dante. Given his participation in the Stefan George circle, it’s not surprising that Kantorowicz saw literature as the prime instantiation of what Schmitt called the Catholic *civitas humana*. Unlike Schmitt’s “Catholic political form,” however, Kantorowicz’s political form requires a self-conscious act of mythmaking, involving the deliberate appropriation and manipulation of signs and symbols, including in literature. Kantorowicz’s Dante chapter thus constitutes an aggressive rewriting of Schmitt, not only in the pride of place it gives to literature but also in its vision of the *civitas humana*. As such, it also constitutes a response to Cassirer, whose vision of myth in the modern age seemed to be only negative.

### Cassirer

Before we can fully understand the role of Dante in *The King’s Two Bodies*, however, we need to return to Cassirer. In the 1920s, when Kantorowicz was writing his biography of Frederick II, Cassirer was completing his monumental *Philosophy of Symbolic Forms*, a three-volume study of language, myth, and art that Kantorowicz probably knew.<sup>31</sup> In the volume on myth in *The Philosophy of Symbolic Forms*, Cassirer rejected both idealist and empirical or genetic accounts of myth, focusing instead on the internal logic of myth, including the relationship between sign and signified. At the same time, he cautioned against confusing myth with other symbolic or semiotic modes of expression. Myth for Cassirer is an early stage of symbolic thought and is the product of a community rather than an individual. In Cassirer’s teleological account of the development of symbolic forms, myth is followed by language and then finally by art. With art,

for the first time the world of the image becomes a self-contained cosmos with its own center of gravity. And only now can the spirit enter into a truly free relation with it. Measured by empirical, realistic criteria, the aesthetic world becomes a world of appearance; but in severing its bond with immediate reality, with the material existence and efficacy which constitute the world of magic and myth, it embodies a new step toward the truth. Thus, although myth, language, and art interpenetrate one another in their concrete historical manifestations, the relation between them reveals a definite systematic gradation, an ideal progression towards a point where the spirit not only is and lives in its own creations, its self-created symbols, but also knows them for what they are.<sup>32</sup>

This is a Hegelian vision, in which art's self-knowledge is ultimately surpassed by that of science, which recognizes even more than art the role of symbolic form in mediating the truth: "For what distinguishes science from the other forms of cultural life is not that it requires no mediation of signs and symbols and confronts the unveiled truth of 'things in themselves,' but that, differently and more profoundly than is possible for the other forms, it knows that the symbols it employs *are* symbols and comprehends them as such."<sup>33</sup> For Cassirer, art has a role in man's coming to self-consciousness, but it is ultimately superseded by scientific rationalism.

If Kantorowicz knew Cassirer's work on symbolic form, he must have been struck by Cassirer's very different approach. For, unlike Kantorowicz, Cassirer focused on problems of epistemology and remained remarkably uninterested in politics. Cassirer's 1927 book, *The Individual and the Cosmos in Renaissance Philosophy* (contemporaneous with the *Philosophy of Symbolic Forms*), provides a good example of this blind spot. Even as Cassirer struggled to reconcile a Kantian emphasis on a priori logical categories of understanding with the contingency of historical events, he had little to say about the Italian city-state, the rise of the nation-state, or early modern political thought. Instead, Cassirer argued for the new "primacy of form in Renaissance life and thought" and asserted that this notion of form embraced both artistic and scientific pursuits (159, 161), but not politics. "Thus it has been said of humanism," Cassirer commented, "that its deepest root, and the common bond that joined all humanists, was neither individualism nor politics, neither philosophy nor common religious ideas, but simply artistic sensibility" (161). This is the context in which Cassirer discusses the Florentine humanist Pico della Mirandola's oration on the dignity of man. The *Oration* famously includes a fable about the creation of man in the image and likeness of God, with divinely given capacities for free will and self-transformation. In Cassirer's gloss on Pico, "the being of man follows from his doing; and this doing is not only limited to the energy of the will, but rather encompasses the whole of his creative powers. For all true creativity implies more than mere action upon the world. It presupposes that the actor distinguishes

himself from that which is acted upon, i.e. that the subject consciously stands opposed to the object" (84). What the Renaissance discovers, in other words, is a new relation of "the Ego to the world" (87), where ego and world are both polar opposites and mutually constitutive. The individual subject comes to self-consciousness by working on and transforming the world. In Cassirer's account, there is thus a historical dimension to the development of self-consciousness both in the life of the individual and in the sense that the Renaissance understanding of *homo faber* represented a decisive advance over the Middle Ages (89, 91, 95). Here Cassirer adopted a Hegelian confidence in the teleological march of history. As he wrote in the later *Essay on Man*, a synopsis of his philosophy of symbolic forms, "History as well as poetry is an organon of our self-knowledge," and "Human culture taken as a whole may be described as the process of man's progressive self-liberation."<sup>34</sup> But if art is an important part of man's progressive self-liberation, decisive proof of the forward march of history is provided, above all, by the scientific revolution.

It was not until the last years of Cassirer's life, when he was in exile in the United States, that he turned his scholarly attention to contemporary politics.<sup>35</sup> The impetus seems to have been twofold: the request of friends that he speak about recent political events and Cassirer's own sense of indebtedness to his adopted country for saving him from war-torn Europe. Nazi Germany forced Cassirer to revise his ideas about the progress of reason in history and the obsolescence of myth. But he did not entirely abandon his ideas about the irrationalism of myth. We see this in particular in Cassirer's worry over the reception of Machiavelli, who figured prominently in his account of the gradual secularization of political theory in the early modern period. According to Cassirer, Machiavelli's myth of Fortuna was designed to help the prince manage the inevitable contingency and unpredictability of human action and was thus in the service of human rationality. In the long run, however, Machiavelli's insights were taken over by post-Enlightenment or nineteenth-century Romantic thinkers such as Schelling and Hegel, whose "metaphysical spiritualism . . . paved the way for the most uncouth and uncompromising materialism in political life" (141). It is easy to see how this view fits with Cassirer's intervention in the philosophical debates of his own time, above all his exchange with Heidegger. The problem, for Cassirer, was how to shore up a secular conception of agency, without falling prey to historicism and relativism. Here, in an odd chiasmus of influence, Cassirer turns to Kantorowicz.

Cassirer admits that Machiavelli was not the first person in history to think of the state as secular. He was preceded by, among others, the medieval emperor Frederick II:

One of the earliest examples of a complete secularization of political life is the state founded by Frederick II in the south of Italy; and this state had been created three hundred years before Machiavelli wrote his book. It was an absolute monarchy in

the modern sense; it had emancipated itself from any influence of the Church. The officials of this state were not clerics but laymen. Christians, Jews, Saracens had an equal share in the administration; nobody was excluded for merely religious reasons. At the court of Frederick II a discrimination between sects, between nations or races was unknown. The paramount interest was that of the secular, the “earthly” state.<sup>36</sup>

Cassirer goes on to note that it was paradoxically Frederick’s claim to “a personal relation to God” that emancipated him from ecclesiastical influence and allowed him to erect secular reason in the place of church authority. This explains Dante’s admiration for Frederick, even though he put him in the circle of heretics in the *Inferno*. Cassirer then credits this view of Frederick to “his biographer,” Kantorowicz. In this way, Cassirer himself almost seems to suggest that a medieval notion of political theology—that is, theology in the service of a secular vision of the state—is a better version of Machiavelli and a better model for modern times than the Machiavelli who had been absorbed into the at once idealist and historicist vision of Hegel and his contemporaries.

If we now return to Kantorowicz, we can see that his claim to be continuing the work of Cassirer is somewhat ironic. Cassirer was a latecomer to the analysis of the myth of the state. In contrast, if there is one thing that is constant in Kantorowicz’s work—from the Frederick II biography to *The King’s Two Bodies*—it’s a preoccupation with the political dimension of symbolic forms, and the contribution of the manufactured myth to political power. When Kantorowicz claims to be continuing the work of Cassirer, we are meant to understand that Kantorowicz shared Cassirer’s postwar concern about the harmful effects of myth on politics. I believe, however, that his chief interest was not in condemning the myth of the state but in redeeming the power of manufactured myth for politics. This, for Kantorowicz, is the interest of Dante.

### Dante

As we’ve seen, both Kantorowicz and Schmitt emphasized the distinction between person and office in their analyses of political theology. But Kantorowicz, in his gloss on Dante, also stressed the division between ecclesiastical and political power, the papacy and the empire, the spiritual and the terrestrial paradise. He did so, in part, by arguing with Dante that the emperor derived his power directly from God, without the mediation of the Church (*De Monarchia*, bk. 3). But the pope and emperor did not simply stand for separate institutions or separate spheres. Equally important for Dante and Kantorowicz was the claim that the emperor represented the distinctively human ethical community, and that he did so by appropriating the symbolism of the Church for secular purposes. Here’s Kantorowicz:

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It was . . . the major premise of . . . [On] *Monarchy* that Dante, inspired by Aristotle, attributed to the human community a moral-ethical goal which was a “goal in itself.” [It] was para-ecclesiastical, and therefore independent of a Church which had its own goal. . . . Dante, in order to justify the self-sufficiency and sovereignty of the *universitas generis humani* [corporate body of humanity] appropriated, like the jurists, theological language and ecclesiastical thought for expressing his views concerning the secular body politic; and thereby he arrived at the construction of “a secularized imitation of the religious notion of the Church,” while endowing his creation even with a blessedness of its own: the terrestrial paradise. (*TKTB*, 463)

Kantorowicz stressed that “Dante did not turn *humanitas* against *Christianitas*, but thoroughly separated one from the other; he took the human out of the Christian compound and isolated it as a value in its own right—perhaps Dante’s most original accomplishment in the field of political theology” (465). In his separation of being human from being Christian, Dante effectively envisioned a cosmopolitan world community made up of Jews, Muslims, and pagans as well as Christians.<sup>37</sup> He also provided a new model of the sovereign subject. According to Kantorowicz, when Virgil crowns Dante in *Purgatorio* 27 and pronounces the words “I crown and mitre you over yourself” (a scene Kantorowicz also mentions in his essay “The Sovereignty of the Artist”), he invests Dante as an individual man with the *dignitas*, or office, of man, “which ‘never dies’” (493). Kantorowicz’s use of the phrase “dignity of man” recalls Pico’s *Oration*. But in Kantorowicz’s genealogy of the dignity of man, dignity refers less to the individual’s intrinsic nobility than it does to an office, a notion of representation, whereby the individual comes to stand for the mystical body of mankind. Kantorowicz concedes that medieval jurists and political theorists had imagined the two bodies of the “two-natured God, . . . Justice and Law . . . [or the] People and Polity. . . . It remained, however, to the poet to visualize the very tension of the ‘Two Bodies’ in man himself, to make *humanitas* . . . the sovereign of *homo* and to find for all those intricate cross-relations and interrelations the most complex, terse, and simple, because most human, formula: [Virgil’s] ‘I crown and mitre you over yourself’” (495). By quoting Dante’s Virgil (who is authorizing Dante’s own career by crowning him with laurels), Kantorowicz points to the role of literature in creating the notion of the sovereign subject and restoring the dignity of man.<sup>38</sup> In particular, Virgil enacts a mini-coronation that grants to the poet of the *Commedia* a personal autonomy and poetic authority that, to Kantorowicz’s modern readers, sounds very much like a liberal notion of autonomy. In one and the same literary moment—Dante’s crowning of Virgil—we have both a coronation *and* its constitutionalist revision, thereby dramatizing Kantorowicz’s conviction that the idea of *dignitas*, or office, works historically both to authorize and to undermine the notion of divine kingship. In a similar way, we could say that the idea of *dignitas* functions in Kantorowicz’s own book, in methodological terms, both to underwrite a Foucauldian analysis of the theatrical effects of

power (the New Historicist reading of Kantorowicz) and to permit the recovery of a humanist, even protoliberal ideal of human autonomy that was central to Kantorowicz's response to Schmitt's political theology.<sup>39</sup>

The Dante chapter doesn't simply revise Schmitt, it also replies to Cassirer's concerns about the irrational use of myth. In Dante's scene of coronation, we find the powerful sense of human agency that Cassirer thought was missing in Heidegger and perverted in Nazi mythmaking. As with the implicit reply to Schmitt, here too a crucial part of this reply has to do with the literary dimension of Kantorowicz's argument. Just as Shakespeare comments on and, according to Kantorowicz, dramatizes the real significance of Plowden's legal reports, so Dante's *Commedia* appears as the necessary supplement to his *De Monarchia* and the legal treatises of the late middle ages. Dante, that is, figures prominently in Kantorowicz's argument not only because he was an important historical commentator on the Investiture Controversy but also because he was a poet who envisioned in the manufactured myth of the *Commedia* a new notion of human autonomy and community. Moreover, Dante explicitly linked this idea of the human to the work of literature, in the scene in which Virgil crowns Dante with the laurel wreath. Kantorowicz (who knew of Stefan George's fondness for dressing up as Dante, complete with laurels) must certainly have been aware of the metapoetic dimension of this scene of coronation. Here, we could say, Kantorowicz reveals the essential literariness of his idea of making (both cultural and political), just as, in his reading of *Richard II*, he reveals the literariness of his idea of unmaking. At the same time, he may be telling us that the constitutionalist vision implicit in *Richard II* needs to be complemented by the theological authority Dante appropriates for his own poetic project, if it is not to be vulnerable to Schmitt's critique of liberalism as mere formal neutrality—as illustrating in the political sphere the formalism of the Kantian notion of aesthetics. We might wonder, then, whether this celebration of Dante also responds to Cassirer's description of Enlightenment philosophy: "This philosophy believes . . . in an original spontaneity of thought; it attributes to thought not merely an imitative function but the power and the task of shaping life itself." This is a power and task that Cassirer attributed above all to reason and science, but that Kantorowicz ascribes to literature, juristic fictions, and myth.<sup>40</sup>

In the conclusion to *The King's Two Bodies*, Kantorowicz may be suggesting that the advantage of Dante over Frederick II (both the emperor and Kantorowicz's book by that title) is that, whereas Frederick stands for the manipulation of myth, the *Commedia* (like *Richard II*) stands for literature or fiction that knows itself as such. The Dante chapter thus amounts to a revision of Schmitt's idea of Catholic political form, in line with Stefan George's elevation of literature to the highest form of culture. It also amounts to a revision of Cassirer's idea of symbolic form, which progresses teleologically from myth, to art,

to science. Whereas Cassirer elevated science over art because science “knows that the symbols it employs *are* symbols and comprehends them as such,” Kantorowicz reserved this self-consciousness for art and, especially, literature. But if the conclusion of *The King’s Two Bodies* is about the role of art in bringing about a new, secular cosmopolitanism, such secular cosmopolitanism is not the teleological result of reason in history. To the contrary, it is always vulnerable to the upsurge of the irrational forces of myth.

Here we may finally be in a position to address the odd reverse chronology of *The King’s Two Bodies*, that is, the fact that the book opens with Shakespeare and concludes with Dante. In designing his book in this way, Kantorowicz may be inviting us to question traditional narratives of secularization, which chart the decline or demystification of religion and the rise of rationalism. Such narratives tell a story of progress from the benighted age of myth to one of enlightenment. Kantorowicz, by contrast, appears to think, with Dante, that the secular sphere depends on the religious sphere for definition; he may even think, like Dante, that both the notion of “the human” and the creative powers of the poet depend on the higher authority of God or some divine authorizing principle.<sup>41</sup>

As we’ve seen, in *The King’s Two Bodies* Kantorowicz uses the resources of the legal and literary traditions to reimagine the relationship between politics and theology and the idea of the secular state. And he does so in a way that differs from the narratives of Schmitt or Cassirer. Schmitt diagnosed the emergence of an idea of secularism that involved a declension from a genuine idea of the political; Cassirer told the story of the rational legitimation of the modern state and its subsequent dismantling by Nazi mythmaking, even as he advocated a return to the principles of rationality. In contrast, Kantorowicz’s model is not narratological or teleological at all, but what we might call tropological or chiasmic.<sup>42</sup> Theology, for Kantorowicz, is always already about representational fictions, which is one of the reasons we can use legal and literary fictions as resources for reconceiving the relationship between politics and theology. Kantorowicz develops a new model that doesn’t deny the theological origins of secularism or the constitutional implications of absolutism. But against Schmitt, he links secularism with positive constitutional developments; against Cassirer, he advances what we might call a political theology or myth of human rationalism, one capable of reinvigorating the notion of liberal constitutionalism. For Kantorowicz, there is no irrevocably secular location that protects us from theology. But, if we think back to the preface of *The King’s Two Bodies*, where Kantorowicz alludes to the political theology of fascism, we can say that in Dante he finds a model of the relationship between religion and secular life that is in principle antifascist. It is antifascist in part because it is antinationalist. But it is antifascist as well because it insists on a liberal notion of individual autonomy, even while acknowledging its mythical status.<sup>43</sup>

Here, in conclusion, we may see the ongoing relevance of Kantorowicz's argument about the king's two bodies for modern discussions of political theology. In an essay entitled "The Permanence of the Theological-Political?" Claude Lefort argues that religion is an essential (or permanent) part of the symbolic dimension of the political, even though modern rational thought tends to define politics over against theology.<sup>44</sup> "What philosophy discovers in religion is a mode of portraying or dramatizing the relations that human beings establish with something that goes beyond empirical time and space within which they establish relations with one another. This work of the imagination stages a different time, a different space." A little further on Lefort states: "Modern philosophy cannot ignore its debt to modern religion; it can no longer distance itself from the work of the imagination or appropriate it as a pure object of knowledge" (223); "any society which forgets its religious basis is laboring under the illusion of pure self-immanence and thus obliterates the locus of philosophy" (224). But Lefort is not arguing for a theocracy. To the contrary: he is interested in democracy as that political form that preserves a sense of the contingency of political institutions and political power:

Of all the regimes of which we know, [democracy] is the only one to have represented power in such a way as to show that power is an *empty place* and to have thereby maintained a gap between the symbolic and the real. It does so by virtue of a discourse which reveals that power belongs to no one; that those who exercise power do not possess it; that they do not, indeed, embody it; that the exercise of power requires a periodic and repeated contest; that the authority of those vested with power is created and re-created as a result of the manifestation of the will of the people. (225)

Strikingly, in Kantorowicz's history of the king's two bodies, the body falls away to be replaced, ultimately, by fiction or, in Lefort's terms, by the distinction between symbolic and real power.<sup>45</sup> Whereas fascism and religious fundamentalism attempt to give society a body, the usefulness of the category of fiction is that it complicates any attempt to locate power in one particular place or one particular body.<sup>46</sup> This displacement of the body is, ironically, the message of *The King's Two Bodies*, which, in pointing us to the empty space at the heart of the democratic conception of the political, may be thought of as a secular version of negative theology or as the tragedy of political theology averted.

## Notes

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1. Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ, 1957). All references are to this edition, abbreviated as *TKTB*. Of the many colleagues who read and commented on this essay, I would particularly like to thank David Bates, Maura Nolan, and Lorna Hutson.

2. Heinrich Meier, "What Is Political Theology?" in *Leo Strauss and the Theological-Political Problem*, trans. Marcus Brainard (Cambridge, 2006), 77–87; Steven Smith, *Reading Leo Strauss: Politics, Philosophy, Judaism* (Chicago, 2006).
3. The term first appears in the work of Marcus Varro, resurfaces in Spinoza (as "theologico-politicus") and others in the seventeenth century, and reappears in modern times in the work of Giuseppe Mazzini and Mikhail Bakunin. For the history of the term, see Hent de Vries's introduction to *Political Theologies*, ed. Hent de Vries and Lawrence E. Sullivan (New York, 2006), esp. 25–26. For its specifically Nazi connotations, see Karl Loewenstein, *Hitler's Germany: The Nazi Background to War*, 2nd ed. (New York, 1940), and Franz Neumann, *Behemoth: The Structure and Practice of National Socialism, 1933–1944* [1942; rev. 1944] (New York, 1966), 469, describing "the sophistry of this new theory of transubstantiation implied by the identification of the Leader and the People." These references are from David Bates, who discusses Neumann's "secularized theology of the Nazi state" in his "Political Theology and the Nazi State: Carl Schmitt's Concept of the Institution," *Modern Intellectual History* 3 (2006): 415–42, here 418. On the use of the term "political theology" in twentieth-century Germany, see also John Stroup, "Political Theology and Secularization Theory in Germany, 1918–1939: Emanuel Hirsch as a Phenomenon of His Time," *Harvard Theological Review* 80 (1987): 321–68, and Uriel Tal, "On Structures of Political Theology and Myth Prior to the Holocaust," in *The Holocaust as Historical Experience*, ed. Yehuda Bauer and Nathan Rotenstreich (New York, 1981), 43–74.
4. By old historicism, I mean the early twentieth-century critique of both positivism and neo-Kantianism in law, philosophy, and political thought.
5. Although it was published in 1957, Kantorowicz's *TOTB* was particularly influential in the 1980s, with the rise of New Historicism. There are a variety of reasons for this, not least of which is that Foucault mentioned Kantorowicz with approval in *Discipline and Punish*. It didn't hurt from a Foucauldian perspective that "body" figured prominently in Kantorowicz's title, and that the body that counted was the symbolic body, the charismatic royal body constituted by discourse. And, of course, it positively helped that the book began with a chapter on Shakespeare. In short, by focusing on what Clifford Geertz called "the symbolic aspects of power," *TOTB* offered a model of New Historicism avant la lettre and thus validated its approach. Like his earlier biography of Frederick II, *TOTB* advocated a historiography that deals with myth rather than fact, perceptions rather than positivist ideas of knowledge. It thus provided a methodological model in its attention to symbolic forms and in the pride of place it gave to literature. In fact, one could even argue that *TOTB* was influential not only because of the centrality of myth, literature, and representation but also because *TOTB* is essentially about the power of *metaphor*. But it may also be that Kantorowicz caught on just when he did because his analysis of divinized kingship served as a surrogate for the lost plenitude of subjectivity after the ravages of deconstruction and the critique of the human sciences. In place of the king as representative sovereign subject, we have the construction of kingship through the fiction of the royal body; in place of full presence, we have the social energy of charisma.
6. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, 1985), 36, abbreviated as *PT*. The first edition of this work was published in 1922, a second revised edition in 1934, with a new

- preface. Only a few scholars have commented on this connection between Schmitt and Kantorowicz, among whom see Richard Faber, "Walter Benjamin's *Ursprung des deutschen Trauerspiels* und Ernst H. Kantorowicz's *Die Zwei Körper des Königs*. Ein Vergleich," esp. 176–79, and Anselm Haverkamp, "Stranger than Paradise: Dantes irdisches Paradies als Antidot politischer Theologie," 96. Both essays appear in *Geschichtskörper: Zur Aktualität von Ernst H. Kantorowicz*, ed. Wolfgang Ernst and Cornelia Vismann (Munich, 1998). See also Carl Landauer, "Ernst Kantorowicz and the Sacralization of the Past," *European History* 27 (1994): 1–25, esp. 19; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, 1998); and Alain Boureau, *Histoires d'un Historien: Kantorowicz* (Paris, 1990), 162–67.
7. Ernst Cassirer, *The Myth of the State* (New Haven, CT, 1946), 282. On *TKTB* as engaging Cassirer's naive view of myth in *The Myth of the State*, see Joseph Mali, *Mythistory: The Making of a Modern Historiography* (Chicago, 2003), 193–94.
  8. Peter Eli Gordon, "Continental Divide: Ernst Cassirer and Martin Heidegger at Davos, 1929—An Allegory of Intellectual History," *Modern Intellectual History* 1 (2004): 219–48, here 247 and 225.
  9. In later work, Schmitt will attribute this declension to Hobbes. See in particular Schmitt's *The Leviathan in the State Theory of Thomas Hobbes* [1938], trans. George Schwab and Erna Hilfstein (Westport, CT, 1996).
  10. See Samuel Weber, "'The Principle of Representation': Carl Schmitt's *Roman Catholicism and Political Form*," in *Targets of Opportunity: On the Militarization of Thinking* (New York, 2006), 34.
  11. Carl Schmitt, *Roman Catholicism and Political Form* [1923], trans. G. L. Ulmen (Westport, CT, 1996), 14. References to the English text, which is based on the second, revised 1925 edition of Schmitt's work, will be abbreviated as *RC*.
  12. Schmitt, *RC*, 18–19; see Weber, "Principle of Representation," 36. Weber argues that Schmitt's model here is the crucifixion—not simply incarnation.
  13. It is likely that Schmitt was influenced here by nineteenth-century "Germanist" (as opposed to Romanist) legal scholars who saw the idea of the *persona ficta* as incompatible with the organic idea of community (*Genossenschaft*). See note 21.
  14. On Schmitt's idea of the institution, and the way it qualifies his decisionism, see Bates, "Political Theology and the Nazi State," 415–42, and note 17 below.
  15. I've discussed Schmitt's reading of *Hamlet* in "Hamlet or Hecuba: Carl Schmitt's Decision," *Representations* 83 (Summer 2003): 67–96, from which I've borrowed this and the preceding paragraph. See also Schmitt, *RC*, 22–23.
  16. Heinrich Meier, *The Lesson of Carl Schmitt*, trans. Marcus Brainard (Chicago, 1998), 11.
  17. See Schmitt, *RC*, 18, on the pope as juristic person and *PT*, 39–40, on the idea of the "juristic person." Schmitt's "personalism" is not the same thing as individualism; it is crucial for him that the juristic person embodies an idea (of the Church or state), that he "represents" this idea. This is also why Schmitt's "personalism" is compatible with his emphasis on institutions.
  18. At times, Schmitt argued that the democratic notion of the people can constitute a genuine representation (*RC*, 21); at other times, he appeared to reject the juristic fiction whereby the people could constitute the body politic. At times, Schmitt saw Hobbes as defending a personalistic idea of sovereignty; at other times, as attacking it (*RC*, 21).

19. Paul Vinodograff, "Juridical Persons," *Columbia Law Review* 24 (1924): 594–604, here 602, referring to the view of F. W. Maitland and Otto von Gierke. Vinodograff distinguishes between the fictional and realist interpretations of the corporation as a juridical person on 600. See also *TKTB*, 209, on *corpus verum* (an individual person's body), and *corpus fictum* (a collective of any size).
20. See, for example, Kathy Eden, *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton, 1986), and Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford, 2007).
21. Although it is beyond the scope of this essay to explore this point, Kantorowicz is drawing on the legal scholarship of Otto von Gierke and F. W. Maitland, both of whom he cites in *TKTB*. Gierke is most famous for his distinction between *Gesellschaft* and *Genossenschaft*, between "mechanistic" Roman legal ideas of corporations as contractual arrangements and "organic" German ideas of corporate bodies that have a real and not merely fictive group personality. Maitland made a similar distinction between the continental (Roman law) idea of the legal fiction of the corporation and the commonsense view that groups were persons in a more than fictional sense. Maitland is also Kantorowicz's source for the history of the "corporation sole" in English law, i.e., the anomalous idea (from a Roman law point of view) that there can be a corporation of one (the king). Whereas Maitland represents the corporation sole as a distinctively English idea, Kantorowicz stresses the influence of continental ideas of legal fiction on English ideas of the corporation sole, with the aim of exposing the constitutionalist implications of the king's two bodies. In other words, whereas Gierke and Maitland had distinguished between the English idea of the corporation sole (invested in a real person) and the Roman idea of *persona ficta* (which could stand for many persons or a whole people), Kantorowicz argues that, under the influence of canon law, English law came to blur the distinction. He first shows the influence of Christian ideas of the mystical body of Christ on the developing English idea of the king as a corporation sole—i.e., a corporation of one. He then traces the fortunes of this person, from Christ-centered, to law-centered, to polity-centered person much closer to the conception of *persona ficta* in Roman law. In the process, an idea that would have been seen as treasonous in the fourteenth century—the notion that the king's two bodies were separable—fueled a constitutionalist revolution of the people against the real person of the sovereign. In this way Kantorowicz argues that Roman canon law helped to bring out the constitutionalist implications of royal charisma (167). Kantorowicz thus differed from his predecessors in using the Roman notion of a legal fiction to qualify the personalistic idea of representation derived from Christianity, which was so important to Schmitt. Like Ernest Barker, who wrote an introduction to the 1933 English translation of Gierke's work, Kantorowicz in 1957 seems eager to distance himself from what might appear to be the fascist connotations of "*Genossenschaft*." On Gierke and Maitland, see David Runciman, *Pluralism and the Personality of the State* (Cambridge, 1997), esp. 91–99.
22. Whether Kantorowicz's genealogy of English constitutionalist thinking is accurate is another question altogether. For a very different account, see Alan Cromartie, "The Constitutionalist Revolution: The Transformation of Political Culture in Early Stuart England," *Past and Present* 163 (1999): 76–120. For an account that explicitly addresses Kantorowicz, see David Norbrook, "The Emperor's New Body? *Richard II*, Ernst Kantorowicz, and the Politics of Shakespeare Criticism," *Textual Practice* 10 (1996): 329–57. According to Norbrook, in

- stressing instead the way arguments for royal absolutism could fuel early modern republicanism, Kantorowicz provided an apologia for his earlier celebration of absolutism in his biography of the medieval Hohenstaufen emperor, Frederick II. For a similar argument, see Martin Ruehl, "In This Time Without Emperors: The Politics of Ernst Kantorowicz's *Kaiser Friedrich der Zweite* Reconsidered," *Journal of the Warburg and Courtauld Institutes* 63 (2000): 187–242.
23. Shakespeare, *Richard II*, 4.1.203ff., quoted in *TKTB*, 36–37.
  24. Lorna Hutson, "Not the King's Two Bodies: Reading the 'Body Politic' in Shakespeare's *Henry IV*, Parts 1 and 2," in *Rhetoric and Law in Early Modern Europe*, ed. Victoria Kahn and Lorna Hutson (New Haven, CT, 2001), 166–98, as well as Hutson's essay in this issue.
  25. In addition to the passages already cited, Kantorowicz calls the idea of the king's two bodies a fiction on 18, 21, and 23 in chapter 1 on Plowden.
  26. See *TKTB*, 41, on Essex. Kantorowicz writes, "It would not have been surprising at all had Charles I himself thought of his tragic fate in terms of Shakespeare's *Richard II* and of the king's twin-born being" (41). See Sean Kelsey, "The Death of Charles I," *The Historical Journal* 45 (2002): 707–54; on 748, Kelsey shows that Charles did indeed allude to *Richard II* during his trial.
  27. Ernst Kantorowicz, "The Sovereignty of the Artist," originally published in 1961 and republished in Ernst H. Kantorowicz, *Selected Studies* (Locust Valley, NY, 1965), 352–65, here 354. I am grateful to Rachel Eisendrath of the University of Chicago for calling this passage to my attention.
  28. Dante, *The Divine Comedy*, trans. with a commentary by Charles Singleton (Princeton, 1973), 3:1.29.
  29. Boureau, *Histoires d'un historien*, 167.
  30. Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia, 1867), chap. 18, "Of Corporations," 390.
  31. Johannes Fried, "Ernst H. Kantorowicz and Postwar Historiography: German and European Perspectives," in *Ernst Kantorowicz*, ed. Robert Benson and Johannes Fried (Stuttgart, 1997), 180–210. In this and the following paragraph, I draw on Ernst Cassirer, *The Philosophy of Symbolic Forms*, 3 vols. (New Haven, CT, 1955), esp. vol. 2, *Mythical Thought*; and Ernst Cassirer, *The Individual and the Cosmos in Renaissance Philosophy*, trans. Mario Domandi (Philadelphia, 1963), originally published in 1927.
  32. Cassirer, *Philosophy of Symbolic Forms*, 2:26.
  33. *Ibid.*
  34. Ernst Cassirer, *An Essay on Man* (New Haven, CT, 1944), 206 and 228, cited in Cassirer, *Philosophy of Symbolic Forms*, 1:65.
  35. Cassirer did make a number of speeches in support of the Weimar republic between 1928 and 1930, and in 1932 he published a defense of the idea of natural law, which he linked to a cosmopolitan idea of humanity. See David R. Lipton, *Ernst Cassirer: The Dilemma of a Liberal Intellectual in Germany, 1914–33* (Toronto, 1978), chap. 10.
  36. Cassirer, *Myth of the State*, 137.
  37. In his account of Dante's cosmopolitanism, Kantorowicz may have been influenced by Jacob Burckhardt's account of Dante in *The Civilization of the Renaissance in Italy* (1860), trans. S. G. C. Middlemore (Oxford, 1945). Vincent Pecora discusses Burckhardt on Dante's secular cosmopolitanism in *Secularization and Cultural Criticism* (Chicago, 2006), 195–97.

38. Although the laurel in *Purgatorio* 27 is not explicitly described as the crown of poetry, it seems clear this is one of its connotations, given the usual connotations of the laurel and *Paradiso* 1.29 where the laurel is used to crown “o cesare, o poeta.” On *Purgatorio* 27, see Albert Russell Ascoli, *Dante and the Making of a Modern Author* (Cambridge, 2008), 329–56. In his commentary on *Purgatorio* 27, Charles Singleton notes, “the crown and miter . . . were used in the crowning of an emperor, and . . . should not be construed as pointing to *two* powers, empire and church respectively.” Singleton cites Kantorowicz on the use of the mitre in the crowning of the temporal ruler (Singleton, *Divine Comedy*, 2:665).
39. Of course, it’s also important to note that this moment of liberal autonomy is conspicuously staged as an interaction between Dante and his most authoritative precursor: Dante does not crown himself but instead requires the intervention of Virgil. This moment of heteronomy suggests the structural necessity of an external authority or third term in any scene of self-authorization. It suggests, in short, that self-authorization is itself a fiction, one that may be parasitic on theological or ecclesiastical notions of authorization. I return to this point later in the essay.
40. Ernst Cassirer, *The Philosophy of the Enlightenment*, trans. Fritz C. A. Koelln and James P. Pettegrove (Boston, 1964), viii.
41. On this point, see Kantorowicz’s remarks in “The Sovereignty of the Artist”: “No one aware of the late medieval development of political theories will be surprised to find an analogous development within the field of artistic theories. The supreme human authority no longer was vested in the officer alone, be he emperor, king, or pope. It was vested in man as well or, as Dante would have said with Aristotle, in the *optimus homo* adorned ‘with mitre and with crown.’ To be Man, in the emphatic sense of the word, had come to be an *officium*, not only for the Neo-Platonists or for Campanella, but already for Dante. And through the agency of Petrarch the *officium poetae* had become a well-articulated notion. Every *officium*, however, in order to assert itself, demanded or was in need of some kind of quasi-theological justification and exaltation” (365).
- It’s clear that much more remains to be said about Kantorowicz’s reading of Dante. A fuller discussion would probably need to take into account the work of Friedrich Gundolf, another George acolyte. Gundolf’s essay, “Dichter und Helden” (1911) “singles out Alexander the Great, Caesar, and Napoleon as world-historical figures in the realm of politics, and Dante, Shakespeare and Goethe as their counterparts in the realm of language.” See Carl Landauer, “EK and the Sacralization of the Past,” *European History* 27 (1994): 1–25, here 3. See also Kay E. Schiller, “Dante and Kantorowicz: Medieval History as Art and Autobiography,” *Annali Italianistica* 8 (1990): 396–411. Schiller reads Kantorowicz not as a nationalist but as a promoter of George’s cultural “secret Germany.” See also Mali, *Mythhistory*, 202–8.
- It would also be interesting to explore the possibility of a three-way conversation between George, Erich Auerbach, and Kantorowicz. See Auerbach, *Dante, Poet of the Secular World* (1929), the last chapter of which begins by citing George’s praise of Dante (174).
42. See *TKTB*, 55, on the effect of chiasmus in political theology.
43. Here Kantorowicz invites comparison with that other great maker of myths about the early modern period, Jacob Burckhardt (whose own *Civilization of the*

*Renaissance in Italy* begins with a discussion of Frederick II and “the state as a work of art”), but that is another story.

44. Claude Lefort, “The Permanence of the Theologico-Political?” in *Democracy and Political Theory*, trans. David Macey (Cambridge, 1988), 213–55.
45. Lefort’s conclusion raises questions about the permanent success of this distinction:

Rather than seeing democracy as a new episode in the transfer of the religious into the political, should we not conclude that the old transfers from one register to another were intended to ensure the preservation of a *form* which has since been abolished, that the theological and the political became divorced, that a new experience of the institution of the social began to take shape, that the religious is reactivated at the weak points of the social, that its efficacy is no longer symbolic but imaginary and that, ultimately, it is an expression of the unavoidable—and no doubt ontological—difficulty democracy has in reading its own story, as well as of the difficulty political or philosophical thought has in assuming, without making it a travesty, the tragedy of the modern condition? (“Permanence,” 255)

In the end, it is questionable whether “the intractably empty space implied by Lefort’s conception of the overdetermined character of the symbolic order can fully coincide with the instrumental notion of individual autonomy Kantorowicz’s version of fiction seeks to underwrite.” I owe this comment to Christopher Pye.

46. Lefort, “Permanence,” 233.